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GENERAL AND COMPLETE DISARMAMENT:
MONGOLIA'S INTERNATIONAL SECURITY
AND NUCLEAR-WEAPON-FREE STATUS

SECURITY COUNCIL
Fifty-fifth year

Letter dated 28 February 2000 from the Permanent Representative of Mongolia to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit to you herewith the text of the law of Mongolia on its nuclear-weapon-free status and of the resolution on the measures to be taken in connection with the adoption of the above law, both adopted by the State Great Hural (Parliament) of Mongolia on 3 February 2000 and entering into force on the same day.

I should be grateful if you would have the present letter and its annexes circulated as a document of the General Assembly under the item entitled "General and complete disarmament: Mongolia's international security and nuclear-weapon-free status", and of the Security Council.

(Signed) Jargalsaikhany ENKHSAIKHAN
Ambassador
Permanent Representative

Annex I

Law of Mongolia on its nuclear-weapon-free status, adopted on 3 February 2000

CHAPTER ONE

General provisions

Article 1. Purpose of the Law

The purpose of the present Law is to regulate relations pertaining to the preservation of the territory of Mongolia in its entirety, including its air space, land, waters and the sub-soil free from nuclear weapons, which constitutes an important factor for ensuring Mongolia's security.

Article 2. Legislation on Mongolia's nuclear-weapon-free status

2.1 The legislation on Mongolia's nuclear-weapon-free status shall consist of the Constitution of Mongolia, the present Law and other legislative acts adopted in conformity with them.

2.2 In case an international treaty to which Mongolia is a party contains provisions different from those provided for in the present Law, the provisions of the international treaty shall prevail.

Article 3. Definitions

3.1. The definitions contained in the present Law shall have the following meaning:

3.1.1 "nuclear weapon" means any explosive device that is capable of releasing nuclear energy in an uncontrollable manner and that can be used for hostile purposes;

3.1.2. "nuclear-weapon-free status" means a legal status of being free from nuclear weapons.

Article 4. Prohibitions resulting from the nuclear-weapon-free status

4.1 An individual, legal person or any foreign State shall be prohibited on the territory of Mongolia from committing, initiating or participating in the following acts or activities relating to nuclear weapons:

4.1.1 develop, manufacture or otherwise acquire, possess or have control over nuclear weapons;
4.1.2 station or transport nuclear weapons by any means;
4.1.3 test or use nuclear weapons;
4.1.4 dump or dispose nuclear weapons grade radioactive material or nuclear waste.

4.2 Transportation through the territory of Mongolia of nuclear weapons, parts or components thereof, as well as of nuclear waste or any other nuclear material designed or produced for weapons purposes shall be prohibited.

Article 5. Uses of nuclear energy and technology

5.1 The use of nuclear energy and technology shall be permitted only by the State administrative authority in charge of nuclear energy and solely for peaceful purposes such as health care, mining, energy production and scientific research in accordance with the provisions of the international treaties to which Mongolia is a party as well as in conformity with the norms and principles of international law.

5.2 For the purpose of implementing Article 5.1 of the present Law and banning the dumping or storage in the vicinity of the borders of Mongolia of nuclear material or waste that might directly or in the long run indirectly adversely affect the safety of the population and the environment, Mongolia shall cooperate with the International Atomic Energy Agency (IAEA), other appropriate international organizations and the States that have nuclear programs.

CHAPTER TWO

Verification

Article 6. National verification of the implementation of the legislation on the nuclear-weapon-free status

6.1 On the basis of the proposals of the central administrative authority in charge of foreign relations and of other organizations, the National Security Council of Mongolia shall, within its functions and competence, coordinate the following activities:

6.1.1 implementing of a single State policy concerning the prohibited and permitted activities pertaining to the nuclear-weapon-free status in Mongolia;

6.1.2 institutionalizing internationally Mongolia's nuclear-weapon-free status;

6.1.3 taking an active part in the activities of the appropriate international organizations, exchanging information on the prohibited and permitted activities in Mongolia and providing information to national organizations.

6.2 The competent authority of Mongolia shall have the right to gather information, stop, detain and search any suspected aircraft, train, vehicle, individual or group of persons.

6.3 The central administrative authority in charge of foreign relations shall be entrusted with monitoring the compliance with the present Law and the international commitments assumed by Mongolia in connection with the nuclear-weapon-free status.

6.4 Non-governmental organizations or individuals may, within the mandate provided for by the legislation, exercise public oversight of the implementation of the legislation on the nuclear-weapon-free status and submit proposals thereon to the relevant State authority.

Article 7. International verification on the implementation of the legislation on the nuclear-weapon-free status

7.1 Mongolia shall conduct international verification over the implementation of the present Law in cooperation with the relevant international organizations or by concluding special international agreements thereon.

CHAPTER THREE

Liability

Article 8. Liability for violation of the legislation on the nuclear-weapon-free status

8.1 An individual or legal person that violates Article 4 of the present Law shall be held liable in accordance with the Criminal Code.

8.2 The facility, equipment, material, raw material or means of transportation used for the activities prohibited by Article 4.1 of the present Law shall be expropriated by the State.

8.3 An individual or legal person that violates the present Law shall pay compensation for the damage caused to the interests of Mongolia as well as to the population, the environment and the properties in accordance with the relevant legislation of Mongolia or in conformity with the appropriate international treaty, the principles and norms of international law.

8.4 In case of violation or suspected violation of the present Law by a foreign State, Mongolia shall, within its international treaty obligations or norms and principles of international law, officially notify the State concerned of the violation or suspected violation, request explanation and peacefully resolve any question that may arise therefrom. If deemed necessary, the International Atomic Energy Agency (IAEA) and other relevant bodies could be asked for assistance. In case of a dispute of a legal nature, measures could be taken up to referring the matter to the relevant international court or arbitration.

Article 9. Amendment and termination of the Law

9.1 If the vital interests of Mongolia are affected, the present Law may be amended or terminated.

CHAIRMAN OF THE STATE GREAT HURAL OF MONGOLIA — **R. GONCHIGDORJ**

Annex II

Resolution 19 of the State Great Hural of Mongolia on measures to be taken in connection with the adoption of the law on its nuclear-weapon-free status, adopted on 3 February 2000

In its foreign policy, Mongolia sets the goal of pursuing its national interests, developing friendly cooperation with all the countries of the world as well as actively contributing, to the extent possible, to the efforts of the international community to strengthen peace and security. It is also pursuing a policy of refraining from joining any military alliance or grouping, or allowing the use of its territory against any other State as well as banning the stationing on its territory of foreign troops and weapons, including nuclear and other weapons of mass destruction. With respect to its two neighboring States, Mongolia is pursuing the policy of maintaining balanced and friendly relations and developing broad cooperation.

Mongolia consistently advocates disarmament and, on its part, is taking concrete steps to promote the goal of non-proliferation of nuclear weapons. Within the framework of this policy, in 1992 Mongolia declared its territory a nuclear-weapon-free zone and has since been pursuing the policy of and taking the measures aimed at institutionalizing and guaranteeing it. One of the results of such a policy has been the adoption by the United Nations General Assembly at its 53rd regular session on 4 December, 1998 of the resolution 53/77D entitled "Mongolia's international security and nuclear-weapon-free status".

Keeping Mongolia's territory free of nuclear weapons is fully in line with its policy aimed at strengthening its national security by political and diplomatic means.

Strengthening Mongolia's nuclear-weapon-free status at the State policy level, further clearer defining of the status and its observance would be important in strengthening mutual confidence and Mongolia's external security environment as well as in linking the country's national security to regional security and stability.

Mongolia's nuclear-weapon-free status represents a novel approach in the practice of international relations, which in its wider context could be considered as our country's concrete contribution to the policy and efforts of the international community aimed at strengthening the regime of non-proliferation of nuclear weapons.

Based on the all above and in connection with the adoption of the Law of Mongolia on nuclear-weapon-free status, the State Great Hural of Mongolia resolves:

1. **To mandate the Government /R. Amarjargal/ to take the following measures:**

1/ to actively cooperate with and acquire assistance from the relevant States, international organizations, including the International Atomic Energy Agency, in implementing the Law of Mongolia on the nuclear-weapon-free status and the United Nations General Assembly resolution entitled "Mongolia's international security and nuclear-weapon-free status";

2/ to take the necessary measures to ensure normal functioning of the stations designed to monitor nuclear weapons tests, that are situated on the territory of Mongolia;

3/ to report, as the case may be, to the Standing Committee on Security and Foreign Policy Affairs of the State Great Hural of Mongolia on the implementation of the Law of Mongolia on the nuclear-weapon-free status, of the present Resolution and other legislative acts adopted in conformity with them.

2. **The present Resolution shall be implemented from the day of the entry into force of the Law of Mongolia on the nuclear-weapon-free status.**

CHAIRMAN **R. GONCHIGDORJ**

United Nations A/54/770–S/2000/161

General Assembly
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General Assembly
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Agenda item 152
Convention on jurisdictional immunities of States and their property

Security Council
Fifty-fifth year

Letter dated 23 February 2000 from the Permanent Representative of Eritrea to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to transmit copies of the case and supplemental application (attached herewith as annexes I and II, respectively) that my country submitted to the International Court of Justice concerning a grave diplomatic dispute with Ethiopia.

The Government of Eritrea filed a case against the Ethiopian Government in mid-February 1999 in which it brought to the attention of the World Court Ethiopia's grave violations of the Vienna Convention on diplomatic immunities in its seizure, break-in and ransacking of the Eritrean Embassy residence in Addis Ababa. On 16 February 2000, the State of Eritrea subsequently filed a supplemental application with the International Court of Justice presenting new facts on that case.

In the Ethiopian break-in of the Eritrean Embassy residence, armed security forces of the Ethiopian Government forcibly entered the building by vaulting over its security walls; took all of its staff to prison (where they were being held incommunicado at the time that the case was filed); and confiscated all of the diplomatic papers and property present in the Embassy residence at the time. The Ambassador of Eritrea to the Organization of African Unity (OAU) and to Ethiopia was declared *persona non grata* in violation of the OAU Headquarters Agreement. On his way out of the country, approximately 24 hours later, the Ambassador was physically detained in an airport lounge until his diplomatic luggage could be forcibly inspected. Some of his diplomatic property was permanently seized.

The Ethiopian Government has never responded, in any way, to this case filed with the International Court of Justice for grave violations of the international convention on diplomatic immunities that it is a party to.

The present supplemental application brings the current state of affairs to the attention of the International Court of Justice, 12 months after the initial break-in and ransacking of the Embassy residence. The Embassy residence is still in the illegal possession of armed security authorities of the Ethiopian Government.

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Representatives of the Government of Eritrea are not allowed into the residence compound. All property of the Government of Eritrea in that compound has been carted off to an unknown destination. Eritrea has still not been allowed to appoint a new representative to OAU, in violation of that African body's Headquarter's Agreement. This last fact is particularly damaging to Eritrea in that OAU is currently responsible for mediating in the border conflict between my country and Ethiopia.

Furthermore, one of the Embassy staff members taken to prison last year, when the Ethiopian security forces stormed the Embassy residence building, has now been expelled to Eritrea. Mr. Tesfalidet Woldeab, a 52-year-old security guard, spent six months in an Ethiopian prison before he was expelled. During those six months, he was interrogated every night about the conduct of Embassy affairs and tortured by beatings administered to his legs and the soles of his feet. Independent medical examination confirmed the scars remaining on his legs a full 10 months after the beatings commenced.

The international community should pressure Ethiopia to cease its illegal occupation of the Eritrean Embassy residence in Addis Ababa, and allow the State of Eritrea to regain possession of its diplomatic premises. Ethiopia should return all of the diplomatic papers and property illegally seized in the Embassy residence to Eritrea. Ethiopia should also compensate the persons illegally imprisoned by its security forces and should immediately facilitate the appointment of an Eritrean ambassador to OAU.

I should be grateful if you would kindly circulate the present letter and its annexes as a document of the General Assembly, under agenda item 152, and of the Security Council.

(*Signed*) Haile **Menkerios**
Ambassador
Permanent Representative

Annex I

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Minister of Foreign Affairs

16 February, 1999
MFA/A1/025/99

Judge Stephen Schwebel
President, the International Court of Justice
Peace Palace
The Hague, the Netherlands

Dear President Schwebel:

The State of Eritrea writes to request the International Court of Justice to consider a matter of extreme urgency. During the week of February 8, 1999, the government of Ethiopia in Addis Abeba repeatedly violated the diplomatic immunities of the State of Eritrea's accredited representative to Ethiopia and to the Organization of African Unity. Our Embassy Residence premises have been forcibly occupied and privileged diplomatic materials have been seized. The whereabouts and physical safety of several Embassy employees who were in the Embassy residence building at the time of its seizure are unknown.

I have authorized His Excellency Andrebrhan Weldegiorgis, Eritrea's Ambassador to the European Union, to act as my delegate in presenting these papers. We have asked Mr. Jan Paulsson of the law firm of Freshfields to represent us as our Co-Agent before the International Court of Justice. Assisting him will be Mr. Robert Volterra, also of Freshfields. We have requested in addition that Professor Lea Brilmayer of the Yale University School of Law act as a Co-Agent on our behalf.

We thank the International Court of Justice for its attention to our emergency request.

Very sincerely yours,

His Excellency Hailo Weldensae
Foreign Minister, the State of Eritrea
Agent for the State of Eritrea

MINISTRY OF FOREIGN AFFAIRS

APPLICATION

INSTITUTING PROCEEDINGS

before the International Court of Justice

in the case concerning the

VIOLATION OF THE PREMISES AND OF THE STAFF OF ERITREA'S DIPLOMATIC MISSION IN ADDIS ABABA

(ERITREA v. ETHIOPIA)

APPLICATION

INSTITUTING PROCEEDINGS

The State of Eritrea

to the Registrar of the International Court of Justice

1. This is a written application, in accordance with the Statue and Rules of the Court, submitted by the State of Eritrea instituting proceedings against the Federal Democratic Republic of Ethiopia on account of certain wilful acts recently committed by the armed or security forces or other agents of Ethiopia in relation to the premises of Eritrea's mission in Addis Ababa as well as to the head of mission, members of the mission and members of the staff of the mission.

2. The subject of the dispute and a succinct statement of facts are described more fully below.

Legal dispute

3. Eritrea notes that the present dispute concerns matters that fall within Article 36 (2) of the Statute of the Court, including sections (a) through (d). As will be described more fully below, the legal dispute between Eritrea and Ethiopia involves serious questions of international law and comity. These include:

   a) the application of the Vienna Convention on Diplomatic Relations (1961);

   b) the customary international law related to diplomatic intercourse, diplomatic and consular immunity, and the status of internationally protected persons;

   c) the interpretation of the Charter of the Organisation of African Unity and the Headquarters Agreement between the Organisation of African Unity and Ethiopia; and

   d) international human rights law.

4. In addition, there are other issues of law and of fact which, if resolved in favour of Eritrea, would establish breaches of international obligations by Ethiopia and involve questions related to the nature and extent of reparations to be made by Ethiopia to Eritrea for these breaches.

Jurisdiction of the Court in the present dispute

5. In filing this Application, Eritrea submits to the jurisdiction of the Court for the purposes of this case. It does not appear that Ethiopia has at the present time given its consent for the Court to be seized of jurisdiction in this case. Ethiopia is qualified to submit to the jurisdiction of the Court in this matter and may, upon notification of this Application by the Registrar, in accordance with the Statute and Rules of the Court, take the necessary steps to enable the Court's jurisdiction over both parties to this dispute to be confirmed.

6. Eritrea therefore founds the jurisdiction of the Court on the preceding and on Article 36(1) of the Statute of the Court.

Statement of Facts

7. Eritrea's Application is based on the following facts, briefly stated[1]:

   a) Despite the present regrettable state of hostilities between Eritrea and Ethiopia resulting from Ethiopia's sustained military attack on Eritrea, diplomatic relations between the two States have not been broken off;

   b) Since June of 1998, Ethiopian security or armed forces or other agents stationed outside the premises of Eritrea's mission in Addis Ababa have:

      (i) searched and questioned individuals seeking entry to the premises, including staff from Embassies of other States and international organisations in Addis Ababa;

      (ii) prevented the entry of Ethiopian nationals seeking entry to the premises;

      (iii) arrested and detained individuals seeking entry to the premises, including Eritrean nationals; and

      (iv) detained incommunicado members of the staff of Eritrea's mission and deported some of these individuals.

   c) H.E. Ambassador Ghirma Asmerom has been Eritrea's Ambassador to Ethiopia since 1997. He is also Eritrea's accredited representative to the Organisation of African Unity, which is located in Addis Ababa, and to the Economic Commission for Africa of the United Nations;

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[1] These facts are set out in greater detail in the affidavits of H.E. Ambassador Ghirma Asmerom, Eritrea's Ambassador to Ethiopia, to the Organisation of African Unity, and to the Economic Commission for Africa of the United Nations, Mr. Tesfamariam Tekeste, Department Head for Africa, Asia, and Australia of the Ministry of Foreign Affairs of Eritrea, and the letter from the H.E. Haile Weldensae, the Minister of Foreign Affairs of Eritrea to the H.H. Salim Ahmed Salim, Secretary-General of the Organisation of African Unity, which Eritrea submits as appendices 1, 2 and 3 to this Application.

d) On the morning of Tuesday 9 February 1999, Ethiopia cut off the telephone links of the Eritrean Embassy. They remain cut off;

e) At 2:00 p.m. on 9 February 1999, Mr. Daniel Yefru of the Ethiopian Ministry of Foreign Affairs informed Ambassador Ghirma that he was *persona non grata* in Ethiopia and was required to leave Ethiopia within 24 hours;

f) Ambassador Ghirma protested that he was also accredited to the Organisation of African Unity and thus Ethiopia was required to permit him to remain in Addis Ababa in order to perform his responsibilities in relation to that body, but, despite the intervention of the Secretary-General of the Organisation of African Unity, Ambassador Ghirma was unable to obtain this permission from Ethiopia;

g) Ambassador Ghirma protested that 24 hours was insufficient time to prepare his departure and instead requested 72 hours to depart. This request was denied;

h) Upon learning that the next flight from Addis Ababa was scheduled to depart for Jeddah, in Saudi Arabia, at 3:00 p.m. on Wednesday 10 February 1999, Mr. Daniel Yefru of the Ethiopian Ministry of Foreign Affairs, informed Ambassador Ghirma that that flight was sufficiently close to the 24 hour period that it would be acceptable for him to depart on that flight;

i) As Ambassador Ghirma was boarding the agreed-upon flight on 10 February 1999, he was arrested and detained by four armed and uniformed Ethiopian security agents;

j) The Ethiopian security agents ignored Ambassador Ghirma's claims to diplomatic immunity, searched his luggage, removed various papers and correspondence, attempted to conduct a strip-search of His Excellency's person, and then returned him to the aeroplane for him to continue with his flight;

k) At some time before 10:00 a.m. on the morning of Thursday 11 February 1999, Ethiopian government officials approached Eritrea's Embassy residence and demanded that the Eritrean *Chargé d'Affaires* , Mr. Saleh Omar, hand over to them possession of that part of the mission premises. The *Chargé d'Affaires* refused to do so, stating that the Embassy residence was part of the Eritrean mission's premises;

l) Immediately following this incident, the *Chargé d'Affaires* telephoned the Organisation of African Unity and attended upon the Ethiopian Foreign Ministry to register his protest at this attempt to take possession of the Embassy residence;

m) At approximately 11:00 a.m. on the same day, following his return to Eritrea's Embassy residence, the *Chargé d'Affaires* noted that the Ethiopian government officials were still present;

n) Before 12:00 noon on the same day, Eritrean Embassy staff noted that the Embassy residence had been surrounded by a large number of security or armed forces or other agents of Ethiopia;

o) Shortly thereafter, the *Chargé d'Affaires* attended upon the Organisation of African Unity to ask for guarantees for the safety of the mission premises;

p) Upon his return to the Embassy residence from the Ethiopian Foreign Ministry, on the afternoon of 11 February 1999, the *Chargé d'Affaires* was prevented from entering the

premises by Ethiopian security or armed forces or other agents. Nonetheless, he was able to observe that the building had been forcibly broken into and was occupied by Ethiopian security or armed forces or other agents;

q) The *Chargé d'Affaires* was informed that the four Embassy staff and one child who had been present in the Embassy residence when he left that morning had been detained by the Ethiopian security or armed forces or other agents. Despite its best efforts, Eritrea has been unable to locate these Embassy staff members and presumes that, at best, they are being detained incommunicado or held hostage by Ethiopia;

r) Neither the *Chargé d'Affaires* nor any other agent of Eritrea has been permitted access to the premises of the Embassy residence since it was forcibly broken into and occupied by Ethiopia. It remains occupied by Ethiopia;

s) Because of communication difficulties at the present time, Eritrea is uncertain of the precise current status of its Embassy and other Embassy staff, including the *Chargé d'Affaires*;

t) The premises, contents and persons of the staff of Ethiopia's Embassy in Asmara have been and will remain inviolate.

Regrettably, the present state of hostilities between Eritrea and Ethiopia makes it impossible for Eritrea to get assurances about the situation of its Addis Ababa mission's premises or staff.

Request to the Court

8. The facts described above constitute violations of the Vienna Convention on Diplomatic Relations (1961), to which both States are parties, as well as breaches of the Charter of the Organisation of African Unity, the Organisation of African Unity-Ethiopia Headquarters Agreement, and general international law, including international human rights law. These facts represent a dispute that is appropriate for hearing and decision by the Court in accordance with the Statue and the Rules.[2]

9. Eritrea therefore respectfully requests that the Court adjudge and declare as follows:

a) that Ethiopia, by engaging in the conduct described above, violated its international legal obligations to Eritrea as provided by:

(i) Articles 22, 24, 25, 26, 27, 29, 30, 31, 36, 38, 39, 44 and 47 of the Vienna Convention on Diplomatic Relations (1961);

(ii) the Charter of the Organisation of African Unity and the Organisation of African Unity-Ethiopia Headquarters Agreement;

(iii) general international law, including international human rights law;

b) that, pursuant to the foregoing international legal obligations:

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[2] Eritrea refers the Court to its Judgment of 24 May 1980 in the United States Diplomatic and Consular Staff in Tehran case as being directly applicable to the present dispute.

(i) Ethiopia immediately restore the premises of the Eritrean Embassy residence to the possession of Eritrea under its exclusive control, and ensure its inviolability and effective protection as provided for by the treaties in force between the two States and by general international law;

(ii) Ethiopia immediately release, without any exception, the Eritrean Embassy staff detained incommunicado or held hostage by Ethiopian security or armed forces or other agents after they forcibly broke into the Eritrean Embassy residence on 11 February 1999, and afford them full protection, privileges and immunities to which they are entitled;

(iii) Ethiopia immediately release, without any exception, all Eritrean nationals who sought entry to the Eritrean Embassy and are detained incommunicado or held hostage by Ethiopian security or armed forces or other agents, and afford full protection to all such persons;

(iv) Ethiopia refrain from violating the physical integrity and inviolability of the Eritrean Embassy, ensure that the Embassy remains under the exclusive possession and control of Eritrea, and ensure the effective protection of the Embassy;

(v) Ethiopia immediately withdraw any security or armed forces or other agents at the Eritrean Embassy other than to ensure the effective protection of the Embassy;

(vi) Ethiopia immediately desist from the practice of searching or refusing entry to individuals seeking entry to the Eritrean Embassy;

(vii) Ethiopia immediately desist from the practice of detaining incommunicado or holding hostage Eritrean nationals who seek entry to the Eritrean Embassy and to afford full protection to all such persons;

(viii) Ethiopia immediately afford to all the diplomatic and consular staff and members of the staff of the mission of Eritrea the protection, privileges and immunities to which they are entitled under the treaties in force between the two States, and under general international law, including from any form of criminal jurisdiction and freedom and facilities to leave the territory of Ethiopia;

(ix) Ethiopia immediately enable and facilitate Eritrea's accredited representatives to the Organisation of African Unity to perform their duties in Ethiopia as provided for by the treaties in force between the two States, in particular the Charter of the Organisation of African Unity and the Organisation of African Unity-Ethiopia Headquarters Agreement, and general international law;

c) that Eritrea is entitled to the payment to it, in its own right and in the exercise of its right of diplomatic protection of its nationals detained incommunicado or held hostage, of reparation by Ethiopia for the violations of the above international legal obligations which it owes to Eritrea, in a sum to be determined by the Court at a subsequent stage in the proceedings.

10. The undersigned has been appointed by the Government of the State of Eritrea as its Co-Agent for the purpose of this Application and all related proceedings.

Jan Paulsson, Freshfields
Co-Agent of the State of Eritrea

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15 February 1999

APPENDIX 1

APPLICATION

INSTITUTING PROCEEDINGS

in the case concerning the

VIOLATION OF THE PREMISES AND OF THE STAFF OF ERITREA'S DIPLOMATIC MISSION IN ADDIS ABABA

(ERITREA v. ETHIOPIA)

AFFIDAVIT OF HIS EXCELLENCY, MR. GHIRMA ASMEROM

**Ambassador of the State of Eritrea to Ethiopia,
to the Organization of African Unity,
and to the Economic Commission for Africa of the United Nations**

1. My name is Ghirma Asmerom. My present position is Ambassador from the State of Eritrea to Ethiopia, to the Organization of African Unity, and to the Economic Commission for Africa of the United Nations. I have been the Eritrean Ambassador for two years in Addis Abeba, Ethiopia, and before that I was the Director General for African Affairs in the Eritrean Ministry of Foreign Affairs.

2. The events below are all described in accordance with my direct experience and are fully consistent with my best belief under the circumstances.

3. Between June 7, 1998, and the beginning of February, 1999, the diplomatic staff of the Eritrean Embassy in Addis Abeba consisted of only two individuals: myself and Mr. Saleh Omar. A reduction in staff took place in the first week of June, 1999, when the Ethiopian Ministry of Foreign Affairs wrote to our Embassy and ordered that Eritrea's diplomatic staff and administrative must leave within 48 hours.

4. We were allowed to retain only an ambassador and two diplomatic staff. The Ethiopian government asked for our candidates for the two diplomatic staff positions, but of the names that we supplied for diplomatic staff only Mr. Saleh Omar's name was acceptable to the Ethiopian government. This is the reason that Eritrea is currently represented by only two individuals, myself and Mr. Saleh Omar. As a result of not having consular officers, I also assumed consular responsibilities on behalf of the Eritrean community.

5. At that time, we also lost all of our local embassy staff. They were picked up and detained by Ethiopian security agents while outside the Eritrean Embassy compound. We learned this from their relatives, who told us that they were missing. To the best of our knowledge, these staff are currently still in Ethiopian detention, although it is possible that some of them have been deported. These staff were not allowed the opportunity to return the keys to the Embassy that they carried before they were detained. They have not been allowed to communicate with us.

6. For this reason, we have required that our full time guards live full time within the compounds of either the Embassy Building or the Embassy Residence, and have not been able to leave the two compounds.

7. On approximately Friday, 4 February 1999, two of our day guards disappeared. They had been hired about four months previously, to help out during the day and they did not live

in the Embassy compound as the other guards did. On the fifth, they did not show up for work. The wife of one of these two guards said that he had never returned the previous evening. No one knows where the two guards are. To the best of our knowledge, they are being held in Ethiopian detention as prisoners or hostages, or possibly have been deported.

8. On about the 8th of June, 1998, I wrote to the Ethiopian Ministry of Foreign Affairs, complaining about the detention of the local staff. The Ministry of Foreign Affairs never responded to this letter. I also went in person to protest to Dr. Tekeda Alemu, who is the Deputy Foreign Minister of Ethiopia. I stated that I had a consular responsibility and a right to see all detained Eritreans and I also complained about the detention of Ethiopian citizens in our employ. Orally, he refused this request. I asked for a response in writing, but none was ever received. I wrote several additional letters, and spoke to the Ethiopian Director General of African Affairs, Mr. Daniel Yefru, but never received a response.

9. Since the beginning of June 1998, Ethiopian security agents have been stationed full time around the outside of the Embassy Building and the Embassy Residence. The Ethiopian security agents were stationed exactly at the gate, immediately outside. For each of the functioning gates there would be around six uniformed and armed Ethiopian security agents. Outside the main gates, there were also security cars parked, right across the street.

10. Both of these two compounds are large. The Embassy has one functioning gate and one that is permanently closed off, and the Embassy Residence has two functioning gates. There are small sliding windows in the gates for security purposes, which allow full view of what is happening on the outside.

11. Eritreans have been afraid to approach or come into the Embassy Building or the Embassy Residence. We could see what was happening from inside. Anyone that came to the door was immediately seized by security agents. Our guards witnessed this, and I saw this as well.

12. It seemed that, generally, Ethiopians were only warned. However, Eritreans who approached our two compounds were taken away by Ethiopian security forces. It has not been possible to obtain information about their circumstances. To the best of our knowledge, they have either been kept in prison in Ethiopia or deported.

13. Even delivery people from different Embassies were stopped and interrogated when they approached our buildings to deliver packages. This was the general pattern for about nine months, between last June and the beginning of February of this year.

14. On the morning of Tuesday, February 9th our telephones at the Embassy went completely dead. We were unable to determine the cause of the sudden nonfunctioning of the telephone lines. The telephone at the Embassy Building has not functioned since then.

15. On the same day, I was attending a meeting at the Ministry of Foreign Affairs of Ethiopia and afterwards I was told that I should report to the Ministry of Foreign Affairs at 2:00 in the afternoon. I met with the Director General for African Affairs, Mr. Daniel Yefru. He handed me a letter, which said that I had been declared *persona non grata* for engaging in activities incompatible with my diplomatic status. It said that I must leave the country within 24 hours, namely by 2:00 on February 10th.

16. I asked for an explanation of what activities I was accused of engaging in, but Mr. Daniel Yefru said that he was not obliged to give an explanation. He told me, "If you pass that hour, you will face the consequences."

17. I told him, " I have diplomatic immunities and I am accredited to the OAU and the ECA and I am sure I should stay." I mentioned that headquarters agreements for international organizations, such as the one at the United Nations headquarters, require the host country to allow representation even when a particular ambassador is no longer accredited as ambassador to the country, itself.

18. He told me simply, "Your immunity expires at 2."

19. I then left immediately for the OAU, where I reported to the Secretary General His Excellency Salim Ahmed Salim what had happened and asked for intervention. The Secretary General said that he would do his best, and that he would consult with his legal staff about what to do and give me a response Wednesday at 11:00.

20. The next morning, Wednesday, I wrote a letter to the Ministry of Foreign Affairs requesting that Ethiopia grant me an extension until February 12. It was delivered by Mr. Saleh Omar. I explained that it was not possible to secure a flight within 24 hours. So far as I could determine late Tuesday afternoon, the next available flight was a flight to Nairobi on the 12th. Other than by air, there was no way in or out of Addis Abeba.

21. Mr. Daniel Yefru told my colleague who had delivered the letter that there would be a Saudi Airlines flight to Jeddah that day, leaving at 3:00. They told me that 3:00 was only an hour past the deadline of 2:00. They said that the flight on Saudi Airlines was close enough to 2:00, so I had no justification for asking for an extension.

22. At that point I returned once more to the headquarters of the OAU. I asked the Secretary General what they had been able to do. He said he had been unable to convince the Ethiopians. He said that he also had asked for an extension on my behalf, but the Ethiopian government had refused him. I requested from the Secretary General that the OAU help me to get safe passage in the event that I was unable to obtain a Saudi Airlines ticket and a Saudi Arabian visa.

23. By this time, it was after noon and the twenty four hour period was about to expire. I left to try as quickly as possible to get a plane ticket and visa. Having hurried to obtain these, I then rushed to the airport immediately. I got to the airport before the 2:00 deadline and I

rushed to check in. I went to VIP lounge, having checked five suitcases with the airlines. For hand luggage, I kept with me a garment bag and a briefcase.

24. I was waiting there but when boarding time had almost came, an announcement was made that the plane would be delayed for 30 minutes. At around 3:15 the airline started to board the passengers who were seated in the VIP lounge. At this point, while the others were already starting to board, I was approached by four armed Ethiopian security agents. I was forced out of the boarding line and taken to a separate room, where no one else was present.

25. These four security agents included the Chief of Security for Addis Abeba, Mr. Makonnen ("Wedi Cobol"). All were armed. They personally knew me and knew that I was the Eritrean Ambassador, but they said that they were going to search my person, my garment bag and my brief case. I protested that I had diplomatic immunity and cited the Vienna Convention. They simply laughed at this and said "your immunity has expired"

26. I refused to permit them to search my hand baggage. First they said that if I did not give permission, they would simply detain me personally but then they just went ahead and physically took my luggage and searched it over my objections. In the course of searching my two hand bags, they confiscated papers and correspondence that were in my briefcase. They also said they were going to search me bodily, but I said absolutely not

27. They then physically took me to the door of the plane, where I was given back my passport and boarding pass, and I was put on the plane. The departure of the plane was delayed until 4:00, when the Ethiopian security agents finally finished searching me.

28. When the flight arrived in Jeddah, I was met by the Eritrean Ambassador there and the Eritrean consular representative in Jeddah. We went to the baggage retrieval carousel, but none of my luggage had arrived. The Saudi Airlines management representative said there was no more the luggage that had come on the flight. I filed a claim with the airlines, giving them the information from my baggage claim checks. I have checked with the airlines since then, but I have been told that none of my baggage has ever arrived or been found.

29. While I remained in Jeddah, I called the office of the Secretary General of OAU and talked to Mr. Said Djinnit, the Chief of Cabinet. I reported the incidents at the airport and asked him to report to the problem to the Secretary General.

30. While in Jeddah I also attempted to contact Mr. Saleh Omar, who I had left behind in Addis Abeba. I was able to reach him at around 10:00 and he reported to me what was then taking place at the Embassy Residence. He said that persons claiming to be from the Housing Commission had come and demanded that the house be handed to them. He had not allowed them to enter, he said, but he had talked to them through the open door, as they were standing out by the gate.

31. According to what Mr. Saleh Omar told me on the telephone, he said to them "This is the residence of the Eritrean ambassador. It is not his personal residence but the official Embassy Residence, and the rental contract is with the Eritrean government." He also informed them that diplomatic relations had not been cut between Ethiopia and Eritrea and that a replacement ambassador for the OAU and the ECA would be arriving soon. Mr. Saleh Omar told me during this telephone conversation that he had refused to hand over the Embassy Residence, saying that as he was acting as charge he was now residing there. They remained outside and did not force their way in at that time.

32. The usual practice when there is a problem about premises leased to embassies is that it is handled by the Ministry of Foreign Affairs. There is a specific Diplomatic Section for the Ethiopian Housing Commission. He said that they should deal with any problem that they had about the Embassy Residence through the Ministry of Foreign Affairs.

33. Mr. Saleh Omar informed me that he had telephoned the OAU. He informed me that he was about to leave to go to talk to the Ministry of Foreign Affairs.

34. I called him again at around twelve, and he had returned from the Ministry of Foreign Affairs. While there, he had complained to Mr. Daniel Yefru, who said he would look into the matter.

35. He told me in this telephone call that after he returned from the Ethiopian Ministry of Foreign Affairs, and he went into the Embassy Residence compound, Ethiopian police arrived. The housing commission representatives were still there. The new persons who had arrived were uniformed police, in police cars. The Embassy Residence was completely surrounded at the time that I spoke to him on the telephone.

36. He told me that when the police officers arrived, he had immediately called Daniel Yefru, to report the problem. Daniel Yefru stated that there was nothing that he could do because it was a matter for the housing commission. Saleh Omar also informed me that he had already called the OAU.

37. I promised to try to call the Secretary General from Jeddah, and I reported by telephone to the Foreign Ministry in Asmara and asked them to call the Secretary General of the United Nations, H.E. Kofi Annan.

38. As promised, I spoke to Chief of the Cabinet, who told me that Saleh had already called. Saleh called me back in Jeddah at around 1:00, and he told me that the police had then left. He said that he would therefore would go personally to the OAU headquarters to ask for guarantees of the Embassy premises' safety.

39. He called me at around 5:15 that afternoon. According to what he then told me on the telephone, he had gone to Mr. Djinnet's office at the OAU after our 1:00 conversation. He had informed the OAU of the situation, and stated furthermore that he expected that the Ethiopian security agents would come back.

40. After speaking to Mr. Djinnet at the OAU, Saleh went back to the Embassy Residence. When he returned to the Residence, he reported to me, he found that it was completely encircled by a large group of armed and uniformed police. A group of armed security agents or police had physically forced their way into the Embassy Residence compound, and were at that point physically occupying the building. They refused to allow him to enter the compound of the Embassy Residence. He stated to me that he could see from where he was standing that they had entered the building. In fact, he said, they were speaking to him from inside the compound at the point that they refused him entrance.

41. The security forces who were occupying the building told him, in addition, that they had taken away all of the persons who had been inside the building. The individuals inside the building were unwilling to give any information about where these Embassy staff members had been taken. Saleh returned to the OAU once more, and reported the circumstances.

42. During this period and for the rest of the day, I had been trying to call the Residence. The whole afternoon and evening, no one responded. I once again contacted the Chief de Cabinet of the OAU and was told there would be a meeting with the Ethiopian Foreign Ministry at 10:00 on Friday morning. Still no one answered the phone at the Residence. Up until the current time, Mr. Saleh Omar has not been allowed to reenter the premises of the Embassy Residence.

43. These statements are given to the best of my recollection. At this point I am not in possession of my diplomatic papers and records that have been taken from me by the Ethiopian government officials at the airport. Many of our records are still in Addis Abeba, either in the Embassy Residence (from which they may have been taken after the Residence was forcibly entered) or in the Embassy Building.

H.E. Mr. Girma Asmerom
Ambassador of the State of Eritrea to Ethiopia, the OAU, and the ECA

APPENDIX 2

APPLICATION

INSTITUTING PROCEEDINGS

before the International Court of Justice

in the case concerning the

VIOLATION OF THE PREMISES AND OF THE STAFF OF ERITREA'S DIPLOMATIC MISSION IN ADDIS ABABA

(ERITREA v. ETHIOPIA)

AFFIDAVIT OF MR. TESFAMARIAM TEKESTE

Department Head For Africa, Asia, And Australia
Ministry of Foreign Affairs, State of Eritrea

1. My name is Tesfemariam Tekeste. I am a Department Head in the Eritrean Ministry of Foreign Affairs, with the responsibility for Africa, Asia, and Australia. I have held that position since 1997; before that I was working in Ministry of Education, where I was the Director General.

2. As Department Head it is part of my job to receive communications about state of the Embassies in my general geographical area.

3. Over the last week I have received extensive communications about the current situation at the Eritrean Embassy in Addis Abebe from our Embassy in Nairobi where our Ambassador is His Excellency Ghirmai Gebremariam, as well as from our Ambassador to the United Nations, His Excellency Haile Menkarios.

4. The reason for obtaining this information about the Addis Abebe Embassy indirectly through Nairobi and New York is that since last summer it has not been possible to telephone from Ethiopia to Eritrea. In June of last year, Ethiopia suspended microwave communications that had previously allowed callers in Addis Abebe to dial locations in Eritrea. For this reason, if there is a message that our Embassy in Ethiopia wishes to communicate to us, they leave the information with one of our other Embassies.

5. In addition, the telephones at the Embassy Building in Addis Abebe were cut completely on Tuesday, February 9, 1999. Therefore it is now also impossible to call from Asmara to the Eritrean Embassy building in Addis Abebe.

6. I have read the Affidavit of the Eritrean Ambassador to Ethiopia, the OAU, and the ECA, His Excellency Girma Asmerom. The testimony that he provided in that statement is consistent with my information and belief about the occurrences at the Embassy and Embassy Residence in Addis Abebe during the week of February 8. In particular, Paragraphs 29 through 42 are confirmed by the information that was relayed to me by our Ambassadors in Nairobi and New York. The events in the Embassy Residence which are recited in those paragraphs were repeated to our Ambassadors in Nairobi and New York, who passed the information in question on to my office at the Foreign Ministry in Asmara.

7. Furthermore, on Saturday February 13, I telephoned Mr. Saleh Omar at a private telephone number in Addis Abebe and he then repeated the same description of these

events, confirming the information that H.E. Girma Asmerom has related in his witness statement.

8. When I spoke to Mr. Saleh Omar on Saturday on the telephone, he informed me that Mr. Tekeda Alemu, the Deputy Foreign Minister of Ethiopia, had admitted to the Secretary General of the OAU that the Ethiopian security police were physically occupying the Embassy Residence premises.

9. An additional fact that is not contained in the Affidavit of H.E. Girma Asmerom concerns a telephone conversation that I had on Friday afternoon, February 12. At about 5:00 on that afternoon, I received a telephone call from H.E. Haile Menkarios in New York. He told me that he had been repeatedly calling the Embassy Residence in Addis Abeba. A man answered the telephone who spoke only Amharic, an Ethiopian language, but not Tigrinya.

10. H.E. Haile Menkarios told me that he knew that the person who answered the telephone was not one of the Embassy staff. He knew this because he had previously served for several years as Eritrean Ambassador to Ethiopia, and the staff there were all people who had been hired during his tenure there. H. E. Haile Menkarios did not recognize the voice of the person who answered the phone. He told me that he therefore asked, "where are the people who work there?" He was told that "they have all been taken away. There is no one here."

11. H.E. Haile Menkarios then asked the speaker who he was. The voice answered: "I am a government employee."

12. These statements are given to the best of my information and belief.

Mr. Tesfamariam Tekeste
Director General, Africa, Asia, and Australia
Ministry of Foreign Affairs of the State of Eritrea

APPENDIX 3

APPLICATION

INSTITUTING PROCEEDINGS

before the International Court of Justice

in the case concerning the

VIOLATION OF THE PREMISES AND OF THE STAFF OF ERITREA'S DIPLOMATIC MISSION IN ADDIS ABABA

(ERITREA v. ETHIOPIA)

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Minister of Foreign Affairs

13 February 1999

MFA/A1/023/99

H.E. Salim Ahmed Salim
Secretary General
Organization of African Unity
Addis Ababa, Ethiopia

Mr. Secretary General,

I refer to my previous communication to you, reference number MFA/AD/048/99, dated 10 February 1999, concerning the declaration by the Ethiopian authorities that the Eritrean Ambassador to Ethiopia and Permanent Representative to the OAU was *Persona Non Grata*.

I seize this opportunity to further inform you that, following this unwarranted action, the Ethiopian authorities have proceeded to flagrantly violate several provisions of the Vienna Convention on Diplomatic Relations in respect to the person of H.E. the Eritrean Ambassador, the residence of the Ambassador and the functioning of the Embassy. In this connection, let me point out the most outrageous of these violations.

1. Upon the declaration of its Ambassador as *Persona Non Grata*, the Eritrean Government took prompt action to ensure that H.E. the Ambassador would depart Addis Ababa before the expiry of the twenty-four (24) hour deadline at 14:00 hours on 10 February 1999. He had in fact arrived at Addis Ababa Airport well before that time and checked in for departure. Yet, Ethiopian authorities at the airport, in absolute violation of Article 29 of the Convention which, inter alia, declares that "The receiving state shall treat him with due respect and shall take appropriate steps to prevent any attack on his person, freedom, or dignity", searched him, confiscated his briefcase and personal belongings and otherwise treated him with great indignity. Such outrageous behavior also violates Article 39(2) of the Convention which prescribes that the privileges and immunities of a diplomatic agent "cease at the moment when he leaves the country or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict".

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Minister of Foreign Affairs

2. The Charge d' Affaires a.i. who had occupied the residence was prevented from re-entering the residence by armed guards who had, in his absence, broken in and ransacked the place in violation of Article 22(1) which provides that "The premises of the mission shall be inviolable. The agents of the receiving state may not enter them except with the consent of the head of mission" and Article 22(2) which states that "The receiving state is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion...." and Article 22(3) which protects such mission from "search".

3. The Eritrean Mission is now extremely handicapped because its telephone and other means of communication have been severed by Ethiopian authorities while the Charge d' Affaires is under constant harassment. This violates Articles 27(1) which requires the receiving state not only "to permit" but also "to protect free communication on the part of the mission for all official purposes".

4. Additionally, Ethiopian authorities have, following their forcible entry into the residence of the Ambassador, detained and taken away the following employees of the Embassy and their dependents whose whereabouts is not known:
   1. Mr. Tesfalidet Weldeab- Residence staff
   2. Mrs. Alganesh Ghebremichael- Residence staff
   3. Zerai Tesfalidet- Minor, son of the above-named Mr. Tesfalidet
   4. Mr. Wasyehun Ayele- Gurad at Chancellerie
   5. Mr. Asmerom Legesse- Guard at Chancellerie

All these are matters of grave concern to the Government of Eritrea. I need not remind you that the Eritrean Mission is also accredited to the OAU and thus must benefit from the protection of the Organization which cannot remain a disinterested and an indifferent observer but must take appropriate action on the basis of the Headquarters Agreement and customary international law relative to the matter. When the privilege and immunities of diplomatic agents are crudely violated and citizens attached to the diplomatic mission of a member state are arbitrarily detained and made to disappear. I should therefore be grateful if you were to advise the Government of Eritrea of the steps the OAU has taken to rectify the situation and to secure the freedom of the above mentioned Eritrean citizens.

Accept, Mr. Secretary General, the assurances of my highest considerations.

Haile Weldensae
Minister of Foreign Affairs

APPLICATION

REQUESTING PROVISIONAL MEASURES

in the case concerning the

VIOLATION OF THE PREMISES AND OF THE STAFF OF ERITREA'S DIPLOMATIC MISSION IN ADDIS ABABA

(ERITREA v. ETHIOPIA)

APPLICATION

REQUESTING PROVISIONAL MEASURES

The State of Eritrea
to the President of the International Court of Justice

1. This Application requesting the indication of provisional measures is made by the State of Eritrea in connection with the proceedings commenced by Eritrea against the Federal Democratic Republic of Ethiopia on 15 February 1999 by way of a written application.

2. That proceeding and this request are made in relation to certain wilful acts recently committed by the security or armed forces or other agents of Ethiopia in relation to the premises of Eritrea's mission in Addis Ababa as well as to the head of mission, members of the mission and members of the staff of the mission. These acts include:

   a) searching the personal and diplomatic baggage of Eritrea's Ambassador to Ethiopia, to the Organisation of African Unity and to the Economic Commission for Africa of the United Nations;

   b) taking papers and correspondence from the possession of Eritrea's Ambassador;

   c) forcibly breaking into, taking possession of and ransacking Eritrea's Embassy residence;

   d) detaining incommunicado or holding hostage members of Eritrea's Embassy staff;

   e) surrounding Eritrea's Embassy premises with security or armed forces or other agents;

   f) searching, harassing and refusing entry to individuals seeking entry to Eritrea's Embassy premises; and

   g) detaining incommunicado or holding hostage Eritreans seeking entry to its Embassy premises,

   all in violation of Ethiopia's international obligations. These facts are more fully described in the Application Instituting Proceedings submitted by Eritrea to the Registrar of the Court on 15 February 1999.

3. The rights that Eritrea wishes to protect are the rights of its nationals and Embassy staff to life, liberty, protection and security; the rights of inviolability, immunity and protection for its diplomatic and consular officials; the rights of inviolability and protection for its diplomatic premises; the right to have its diplomatic and consular staff and members of the staff of the mission protected in their lives and persons from every form of interference and abuse; and the right to have its nationals protected and secure.

4. Eritrea requests that the Court as a matter of urgency direct Ethiopia immediately to:

   a) restore the premises of the Eritrean Embassy residence to the possession and exclusive control of Eritrea and ensure their inviolability and effective protection;

b) release, without any exception, the Eritrean Embassy staff detained incommunicado or held hostage by Ethiopian security or armed forces or other agents after they stormed the Eritrean Embassy residence on 11 February 1999 and afford them the full protection, privileges and immunities to which they are entitled;

c) release, without any exception, all Eritrean nationals who sought entry to the Eritrean Embassy and are detained incommunicado or held hostage by Ethiopian security or armed forces or other agents, and afford full protection to all such persons;

d) refrain from violating the physical integrity and inviolability of the Eritrean Embassy, ensure that the Embassy remains under the exclusive possession and control of Eritrea, and ensure the effective protection of the Embassy;

e) withdraw any security or armed forces or other agents at the Embassy other than to ensure the effective protection of the Embassy;

f) desist from the practice of searching or refusing entry to individuals seeking entry to the Embassy;

g) desist from the practice of detaining incommunicado or holding hostage Eritrean nationals who seek entry to the Eritrean Embassy and to afford full protection to all such persons;

h) afford to all the diplomatic and consular staff and members of the staff of the mission of Eritrea the protection, privileges and immunities to which they are entitled under the treaties in force between the two States, and under general international law, including from any form of criminal jurisdiction and freedom and facilities to leave the territory of Ethiopia;

i) enable and facilitate Eritrea's accredited representatives to the Organisation of African Unity to perform their duties in Ethiopia as provided for by the treaties in force between the two States, in particular the Charter of the Organisation of African Unity and the Organisation of African Unity-Ethiopia Headquarters Agreement, and general international law;

j) take no action and ensure that no action is taken which may aggravate the tension between the two States or render the existing dispute more difficult of solution.

5. Should these measures not be granted immediately, Ethiopia's actions in the past days, particularly in violating the premises of the Eritrean mission, make it reasonable to believe that Ethiopia will soon violate the premises of Eritrea's Embassy in Addis Ababa. In addition, Eritrea is concerned about the location and circumstances in which its Embassy staff are being detained incommunicado or held hostage by Ethiopia's security or armed forces or other agents. Their continued detention incommunicado puts their lives in jeopardy. Eritrea is also concerned about the location and circumstances in which Eritreans seeking entry to its Embassy are being detained incommunicado by Ethiopian security or armed forces or other agents. Their continued detention incommunicado puts their lives in jeopardy.

6. In addition, Eritrea considers that its inability to be represented at the Organisation of African Unity, particularly given the role being played by that organisation in attempting to resolve the situation arising from the present military offensive being conducted by Ethiopia against Eritrea, presents an irreparable harm and constitutes a dangerous precedent for the peaceful resolution of international disputes.

7. The rights which Eritrea seeks to protect, including the safety of its diplomats and Embassy staff and the inviolability of the premises of its mission, including its Embassy, are central to the essential institution of diplomacy. The continued detention incommunicado of its Embassy staff, the continued occupation of its Embassy residence and the threat to the inviolability of its Embassy give rise to a serious risk of irreparable harm to those rights.

8. In support of its present request, Eritrea refers the Court to its Order of 15 December 1979 indicating provisional measures in the United States Diplomatic and Consular Staff in Tehran case. In that Order, the Court considered facts that in all relevant aspects were substantially the same as the facts in the case at hand and consequently granted appropriate provisional measures.

Jan Paulsson, Freshfields
Co-Agent of the State of Eritrea

15 February 1999

Annex II

FACTUAL SUBMISSION

SUPPLEMENTAL TO THE

APPLICATION INSTITUTING PROCEEDINGS

Before the International Court of Justice
in the case concerning the

VIOLATION OF THE PREMISES AND OF THE STAFF OF ERITREA'S DIPLOMATIC MISSION IN ADDIS ABABA

(ERITREA v. ETHIOPIA)

The State of Eritrea

to the Registrar of the International Court of Justice

1. On 16 February 1999, the State of Eritrea filed a written application, in accordance with the Statute and Rules of the Court, instituting proceedings against the Federal Democratic Republic of Ethiopia in relation to Ethiopia's violation of the premises and of the staff of Eritrea's diplomatic mission in Addis Ababa.

2. It has now been one year since Ethiopia's seizure and ransacking of Eritrea's Embassy premises. Armed or security forces of Ethiopia continue to occupy the Embassy residence. No agent of Eritrea has been permitted access to the premises of the Embassy residence since it was forcibly broken into and occupied by Ethiopia. Embassy staff members have been detained incommunicado or held hostage by Ethiopia. These actions constitute grave violations of established principles of international law, as described in further detail in Eritrea's Application.[1]

3. This Factual Submission updates Eritrea's Application and establishes further violations of international law by Ethiopia, including international human rights law prohibiting mass deportation and torture and other cruel, inhuman and degrading treatment or punishment. In particular, one of the Embassy staff members has since been released and deported to Eritrea following his unlawful detention and torture in Ethiopia by security agents of Ethiopia.

[1] *See* paragraphs 3 and 4 of Eritrea's Application.

4. In light of Ethiopia's continuing and further violations of international law, Eritrea submits herewith additional facts supporting its claim.

Statement of Facts

5. Eritrea's Application established the following facts, briefly stated:[2]

   a. Since June of 1998, Ethiopian security or armed forces or other agents stationed outside the premises of Eritrea's mission in Addis Ababa have searched and questioned individuals, including Embassy staff from other States; prevented Ethiopian nationals from entering the premises and arrested and detained Eritrean nationals seeking to enter the mission;

   b. On 9 February 1999, Eritrea's Ambassador to Ethiopia and accredited representative to the Organization of African Unity and to the Economic Commission for Africa of the United Nations, H.E. Ambassador Girma Asmeron, was informed by an official of the Ethiopian Ministry of Foreign Affairs that he was *persona non grata* and required to leave Ethiopia within 24 hours. Upon his departure on 10 February 1999, Ambassador Girma was arrested and detained by four armed and uniformed Ethiopian security agents. These agents searched Ambassador Girma's luggage, removed various papers and correspondence and attempted to conduct a strip-search of His Excellency's person before allowing him to continue with his flight; and

   c. On 11 February 1999, a large number of security or armed forces or other agents of Ethiopia surrounded and subsequently forcibly broke into and occupied the Embassy residence. Armed Ethiopian agents arrested four members of the service staff and one child.

6. Eritrea supplements these facts with the following:[3]

   a. Mr. Tesfalidet Woldeab had worked as a guard at the Eritrean Embassy in Addis Abeba since 1993. He and his son were Ethiopian citizens but of Eritrean national origin.

   b. On February 11, 1999, Mr. Tesfalidet and his son were on the premises of the Embassy residence and saw armed Ethiopian soldiers surround the Embassy residence, climb over the wall and break into and ransack the building. Mr. Tesfalidet and his son were taken to a high security gaol and imprisoned in a cold underground cell without light or blankets. They

[2] This paragraph summarizes the facts set out in paragraph 7 of Eritrea's Application of February 16, 1999.
[3] This paragraph summarizes the facts set out in detail in the affidavit of Mr. Tesfalidet Woldeab, former guard of the Eritrean Embassy residence. Eritrea submits Mr. Tesfalidet's affidavit as Appendix 1 to this Supplementary Factual Submission.

received food once a day and had to pay for water and to go to the toilet. Mr. Tesfalidet was kept manacled during his six months of detention. During his first days of imprisonment, his feet were manacled and chained to his hands so he was unable to stand up or lie down fully straightened.

c. Mr. Tesfalidet was interrogated at the Ethiopian High Security Police Commission from the second day of his detention. He was questioned for periods of at least two to three hours about the contents of Ambassador Girma's luggage at the time of his departure and about the location of Embassy documents on the Embassy premises. During the interrogation, Ethiopian security agents kept Mr. Tesfalidet tied on the floor and continuously beat him with a stick, particularly on his legs and feet. These interrogations occurred every night for the first seventeen days of Mr. Tesfalidet's detention.

d. In early March, Mr. Tesfalidet was taken to the Embassy residence in the middle of the night. Everything had been removed from the house, including all furniture, personal possessions, books and papers, and the building itself had been severely damaged. Ethiopian guards questioned Mr. Tesfalidet further about Ambassador Girma's luggage and the location of documents in the residence.

e. The interrogations and beatings continued for over three more months. Mr. Tesfalidet and his son were then moved to a different cell. This cell, designed for ten people, held as many as 27 people during Mr. Tesfalidet's detention. Due to the crowded conditions, the cell was extremely hot and there was insufficient space for the prisoners to lie down to sleep. There were no bathroom facilities and a number of prisoners, including Mr. Tesfalidet and his son, were extremely ill. Three prisoners in the cell died during the time of Mr. Tesfalidet's detention. Mr. Tesfalidet and his son both suffered from malaria - his son seriously ill with respiratory problems - and guards had to be bribed for medicine.

f. After six months of imprisonment, Mr. Tesfalidet was separated from his son and transferred to Shogele prison in Addis Ababa with other people of Eritrean national origin. Mr. Tesfalidet was denied the opportunity to find his family or to collect his property. Ethiopian agents informed Mr. Tesfalidet that he would be killed if he stayed in Ethiopia and forced him to leave. He was placed on a bus along with fifty other people, mostly women, children and old men, to be transported to the Ethiopia-Eritrea border. The windows of the bus were kept covered and no food or water was supplied during the three day journey. The deportees were dropped at an active war zone near the border in the middle of the night and had to walk into Eritrea.

g. Since his illegal expulsion, Mr. Tesfalidet has acquired Eritrean citizenship.

h. The current whereabouts of Mr. Tesfalidet's son is still unknown.[4]

Request to the Court

7. The facts described in Eritrea's Application and above constitute violations of the Vienna Convention on Diplomatic Relations (1961), to which both States are parties, as well as breaches of the Charter of the Organisation of African Unity, the Organisation of African Unity – Ethiopia Headquarters Agreement, and general international law, including international human rights law. These facts represent a dispute that is appropriate for hearing and decision by the Court in accordance with the Statute and the Rules.

8. Eritrea therefore respectfully confirms its request that the Court adjudge and declare in the manner described in Eritrea's Application at paragraphs 8 and 9.

9. In light of the additional facts described above, Eritrea further requests that the Court adjudge and declare that:

> Eritrea is entitled to the payment to it, in its own right and in the exercise of its right of diplomatic protection of its nationals detained, tortured and deported by Ethiopia, of reparation by Ethiopia for the violations of the international legal obligations that it owes to Eritrea, in a sum to be determined by the Court at a subsequent stage in the proceedings.

10. The undersigned has been appointed by the Government of the State of Eritrea as its Co-Agent for the purpose of this Application and all related proceedings.

Lea Brilmayer

Professor Lea Brilmayer,
Yale University School of Law
Co-Agent of the State of Eritrea

16 February, 2000

[4] As noted in Mr. Tesfalidet's appended affidavit, two of the staff members were interrogated for five days after their arrest and then apparently released. The Embassy driver continues to be detained incommunicado or held hostage by Ethiopian agents.

WITNESS STATEMENT OF
MR. TESFALIDET WOLDEAB[1]

1. My name is Tesfalidet Woldeab. I am 52 years old. I was born near Asmara which is now the capitol of the State of Eritrea. I was an Ethiopian citizen my whole life, up until the point that Ethiopia expelled me last fall. I carried an Ethiopian identification card and was a registered voter, and voted in all of the Ethiopia elections.

2. For 28 years (from about 1965 until around 1992) I worked as a policeman in the Ethiopian police force. I worked first during the reign of Emperor Haile Sellassie and then during the Dergue period. After the current government came to power I worked for another year in the police force. Then I retired on pension. Between 1993 and February 1998, I worked as a guard at the Embassy of Eritrea in Addis Abeba.

3. The problems at the Eritrean Embassy in Addis Abeba started almost immediately after the beginning of the current conflict between Eritrea and Ethiopia, which was in May, 1998. Ethiopian soldiers and police had the Embassy premises surrounded constantly, and it was impossible for people to come and go. There were at least twenty uniformed Ethiopian security personnel surrounding the Embassy premises at all times. They would warn off any Ethiopians that tried to enter the Embassy. Anyone of Eritrean origin who tried to approach the Embassy would be seized and taken away to prison. Some were deported, others died in prison. Most of them, we still don't know about. This started immediately after the conflict erupted.

4. On February 11, 1999, my son came to the Embassy from Zway where he had been living. His name is Zerai Tesfalidet and he was 18 years old and a student. The Ethiopian military had come to try to pick him up in Zway, and his teachers warned him to run away. The Ethiopians did this because they knew that his father was an Embassy guard. He came to the Embassy to find me on the day after Ambassador Girma Asmerom was

forced to leave the country; that is how I remember the date that he arrived. Since the Embassy was surrounded by Ethiopian police, my son telephoned me to say that he was coming and we sneaked him into the Embassy. He came at about ten in the morning.

5. At around twelve o'clock the Embassy Residence was suddenly surrounded by an even larger number of Ethiopian soldiers than usual. They demanded loudly that I open the gate, but I refused by saying that it was protected Embassy premises. They vaulted over the wall and jumped into the compound. The wall is about three meters tall (with stones making the bottom part of the wall, and cement blocks making the top part) and so they had to use a ladder. About fifteen came over the wall this way, with another twenty or so remaining outside.

6. Some were in uniform but others were not. They were all armed. Some had machine guns and the rest had small arms. They aimed their guns at me and threatened to kill me if I disobeyed.

7. They asked me, "where are the machine guns?" and asked where Ambassador Girma kept his confidential papers. I said, "I don't know anything. I am just the guard." Then they broke down the door to the house and smashed some of the windows. They started taking away papers and other things. I could see this clearly from where I was standing.

8. Then they took us all away. There were five people in the compound at the time that the Ethiopian police forced their way in. Two were women, a maid and a cook, who were not of Eritrean origin. Our Embassy driver was taken away, and also they took myself and my son. The three of us men were of Eritrean national origin.

9. We were taken to the central prison, which is a high security prison. My son and I were taken to a cell underground and left there. The guards told me that the two women were interrogated for five days and then released. I never learned what was done with our driver.

[1] Translation from Tigrinya.

10. The cell that my son and I were left in was completely dark. I couldn't see anything, not even the face of my son. It was extremely cold and we had no blankets until later, when some family members were able to smuggle some blankets to us by giving them to a guard. When you wanted to get something to a family member in prison, you could do this by giving bribes to the guards. It was extremely silent, except for the voices of the guards. We could not hear any cars or other noise. The room was completely underground.

11. The two of us were fed once a day, at about ten in the morning. Each day we were given one injera[2] for the two of us and a little shiro[3] which was very salty. If we wanted water to drink we had to pay the guards. In the evening it was not possible to get anything to drink. It was also not possible to go to the toilet in the evening. During the day, we could use the toilet but only if we gave money to the guards.

12. During this period I was always keep tied. For six months my hands were manacled. For the first few days my feet were also manacled and they were chained to my hands, so that I could not stand up and could not lie down straight. After that it was only my hands that were manacled. You can see that the manacles dislocated my left wrist.[4]

13. My interrogation started on the second day that I was there. At about eight in the evening they came and took me away from my son, to a place specifically for interrogation and torture. It was at the High Security Police Commission. I was tied up. They asked me questions, particularly about the Ambassador. What did he take with him when he was thrown out of the country? Where did he keep his documents? Where are the documents now? I answered that I was just a guard, and I didn't know these things. I said, "If you want to kill me, then please just kill me. I don't know anything like this."

[2] Injera is flat, pancake-like bread.
[3] Shiro is paste made of dried chick peas.

14. I did not recognize the people interrogating me. They wore civilian clothes, unlike the guards, who wore uniforms. They repeated the same questions over and over, for about two or three hours. While they interrogated me, they beat me.

15. They had a stick which had rubber on the outside and a metal rod on the inside. Every time they asked a question that I could not answer, they hit me again. I was still tied up and they put me on the floor to do this so that I couldn't move. I don't know how many times they hit me. It just continued for the whole two or three hours. It was mostly on my legs and my feet, especially the bottom of my feet. But they hit me everywhere. I still have marks on my legs and other parts of body.[5]

16. For the first two and half weeks, they came for me every night. It was always at night, at about the same time (around eight). Sometimes the interrogation lasted more than three hours. It was always the same men. There were four men who asked me questions and took notes, and two who beat me. They all had guns. Sometimes they threatened to kill me. I said I was innocent, and that I didn't know anything. I said, kill me if you want. One of the men said, "We will not kill you directly, but we are going to destroy your legs."

17. These interrogations took place every night for the first seventeen days that I was in prison. Every day when the time approached seven or eight, I was shaking. I wanted to die, that was all that I wanted. My son cried and prayed all night. I could hear him but I could not see him because it was totally dark. I don't know what he did during the time that I was taken away to the interrogation room.

[4] It is not clear whether the English word "dislocated" is a correct translation for the Tigrinya phrase describing the injury to his wrist. The witness may have meant that his wrist had been broken, or it could only have been sprained.

[5] At this point, Mr. Tesfalidet showed the marks on his legs. He also spontaneously dropped to the floor, showing the position he had been in when they had beaten him.

18. Every so often, the prison guards brought outsiders to try to convince me to talk. They said, "Tell what you know. Cooperate with us, and do not throw your life away. Shabiya[6] is destroyed and Badme is in Ethiopian hands."

19. After about seventeen days, they came to me at around midnight and took me out. They took me to the Embassy Residence where I had been a guard. When they took me inside I could see that everything was completely smashed. They had used metal detectors to try to find buried things, and had been digging in the garden. The house was empty; even my own personal things were taken. Three diplomatic cars and one personal car belonging to the Ambassador were taken. The papers and books were all taken away.

20. We stayed about one hour. They kept asking me questions. "Show us where Ambassador Girma kept his documents." They asked me, what was in his luggage when he fled? "You must have carried it. Was it heavy or light?" They told me that Ambassador Girma had special equipment for counterfeiting American money, and that the Embassy was using this to try to destabilize the Ethiopian economy. They said, "Show us where Girma kept his machinery for printing money."

21. About three days later they took me for interrogation again. They told me that all of Eritrea was under Ethiopian control already. They said, "There is no one who can hurt you if you cooperate with us. You should cooperate and help us and we will let you go." They beat me and beat me.

22. It was after I had been in prison for four months that they stopped beating me. Even then they continued to interrogate me. There was a new man, named Redae, who was the head of top security, who interrogated me during this period. During this time my son and I were moved to a different room in the same building. It was lighter, and there were

[6] *Shabiya* is the name that was given to the Eritrean liberation from during the liberation struggle. Literally translated, it means "people's", but the Haile Sellassie and Mengistu governments of Ethiopia used it in a derogatory way to mean "bandit". It has been used in the current conflict as a pejorative term for either the current Eritrean government or for persons of Eritrean national origin who support the current Eritrean government.

other people in the room. There were about twenty people in a very small area, who were mostly serious criminals. They were murderers, rapist, and people like that.

23. I stayed in this room for the remaining time I was in prison. That was for two more months. My son was still there with me for this time. The room was very small; it was supposed to be for 10 people. But while I was there with my son, the contents were twenty people or as many as twenty seven at one time. The room and these prisoners were really lice infested.

24. It was extremely hot because there were so many of us packed in a small space, and it was impossible to breathe. The water in our breath condensed on the metal ceiling and fell onto us on the floor. There were no beds, so we had to sleep on the floor. There was not enough room for everyone even to lie on the floor and the prisoners used to fight over getting a place to sleep. It was terrible to try to sleep on the floor because there was so much urine and excrement on the floor and that was the only place to sleep. You just had to lie down in it.

25. During this time, there was an old man of about 72 years. For almost the whole two months that I was there, he was very ill. His name was Johannes and I believe that he was of Eritrean national origin. He could not get to the toilet by himself, and had constant diarrhea outside the cell on the hall floor when he tried to get there. It was all on the floor. We didn't know the cause. It might have been from the food or water, since many of us were also sick from the food and water. He was very old and weak and so he could not stand it as well as we could. After two months that he was constantly sick he finally died at around six in the evening on a Sunday.

26. Then a young man in our cell, about 23 years of age, also died of the same thing. I will always remember him because we used to sit and talk together a lot. The third one from our room to die was about 33 years old. All of these people died right in front of our eyes. It was the same thing, the constant diarrhea. We all had it. If you had money you could give the guards a bribe and try to get them to bring you medicine from outside.

They would hide it and smuggle it to you in the prison. If you had no money there was nothing you could do.

27. I became sick during this time with malaria, in addition to being infected from the bad food and water. They did not interrogate me during this time, but they watched me constantly. They told the other prisoners that I was a "very dangerous Shabiya" and they would not even let me near the door.

28. My son became very sick of malaria and a respiratory problem and he almost died. All the people in the cell called out and got the attention of the guard. The guards asked, what was wrong. They all pleaded for help, because the boy was so terribly sick. The guards asked "Is he Ethiopian or Eritrean?" When the people said that my son was Eritrean, the guards said that he should die. They refused to do anything. Eventually all of the people in the cell pooled their money together to get the money to bribe the guard. After the guard was bribed, he brought medicine.

29. During this period, the Tigrayan soldiers came to the prison many times. I could hear them talking about the Eritreans who were in the prison. They said, "We have to kill all of the Eritreans here in the prison. In order to get peace, we have to get rid of all the Eritreans, both in prison and out of prison. The ones out of prison we can deport. We have to finish all of them." They said this sort of thing many times.

30. After two months in this cell, I was called at about six in the afternoon. They called twenty of us and took us to the gate of the prison, but then they sent us back. In the morning around ten, all twenty of us were called again. My son was separated from me at this time and I don't know where he is. I have not seen him since we were separated at this point.

31. The twenty of us were taken to Shogele prison in Addis Abeba. This is a place where deportees are collected before they are expelled. We were mixed with another thirty people of Eritrean national origin who had been in prison, some of them for as much as

one year. These people had been accused of things like cooperating with the Embassy, or collecting money for Eritrea.

32. The next day, at nine in the morning, they brought a bus that had all of its windows covered and doors locked, and all fifty of us were put on the bus. We were taken to a place where other Eritreans were being held, who were also being deported. There were mostly children, women, and old men. The name of the place was John Square. We stayed until the night and then we were told that we were being deported. They said, "you will never come back to Ethiopia again."

33. They asked if we had any property left, and I answered that I left all my property at the Embassy, where I used to work. When they learned I was from the Embassy, they said they were not going to allow me to leave after all because I was dangerous. In fact, I didn't want to leave because I wanted badly to have a chance to find my family and to collect my property. I told them I preferred to die rather than leave. Then they told me that I was stupid and that they had been planning to kill me but that they had decided not to. "If you want to stay" they said, "we will kill you. You ought to get our of here immediately." They pushed me onto the bus and I had to leave.

34. It was midnight when the buses left. The bus I was on drove three days to get to the border near Assab, at Burie. There were all different people, from old people to very young children, on my bus. There was a baby only forty days old. The babies and children cried all of the time because it was so terribly hot. They windows were all closed and it was not possible to breathe. They had no water or food. They cried the whole time and we were so afraid for the children.

35. Mostly we traveled at night, and during the day we were held inside the bus and not allowed to leave. We had to ask for turns to go to the bathroom outside the bus and the guards took us by rows. When we reached Burie near the border, it was about ten at night. We were dropped at a place that was surrounded by mines and we were all afraid because it was an active war zone. We walked about a kilometer through the darkness.

The Eritrean soldiers had not been told that we were coming. So when they heard our voices coming through the darkness, they were surprised. They almost shot us because they assumed at first that we must be Ethiopian soldiers. But then they heard the children crying and the women calling out for help. They approached us then, and the soldiers helped the old people and the children to walk.

36. From there we went to Assab by bus, took a freighter to Massawa, and then we came by bus to Asmara. The Red Cross helped us. The Red Cross people were surprised because they had not had any notice that we were coming.

37. When I was taken to prison, my two daughters went to stay with an Ethiopian family. They were ages 23 and 18. The older one is sick. I heard that after I was taken to prison that they were put in prison also, but that now they have been let out. I have not been able to get reliable information about their current circumstances.

38. I have also been told that all of my property that I left in Addis Abeba was taken by the Ethiopian government. I know that all of the property that I had at the Embassy residence was taken because I saw that with my own eyes, but I also had personal property at my home that I was not allowed to collect before they expelled me.

39. This statement is a true and accurate description of the events that took place, to the best of my ability.

Tesfalidet Woldeab

Asmara, Eritrea, January 22, 2000